In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 244

READY TRUCK LINES, INC., APPELLANT

v.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLEES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

MOTION TO AFFIRM

Appellees, pursuant to Rule 12, paragraph 3, and Rule 7, paragraphs 3 and 4, move that the decree of the court below be affirmed.

1. This is a direct appeal from the final decree of a specially constituted court of three judges established pursuant to the Urgent Deficiencies Act of October 22, 1913, dismissing appellant's petition to annul, set aside and enjoin an order of the Interstate Commerce Commission entered September 30, 1940. The Commission's order denied appellant's application for a permit as a contract carrier by motor vehicle under the "grandfather" proviso of Section 209 (a) of the

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Motor Carrier Act, 1935 (the pertinent provisions of which are quoted in the Appendix hereto), upon a finding that the applicant had failed to establish that it was on July 1, 1935, and continuously since had been, in bona fide operation as a contract carrier by motor vehicle.

2. The decree of the court below, sustaining the Commission's order, should be affirmed without argument because the appeal therefrom presents no substantial question. While appellant's jurisdictional statement does not disclose the specific grounds of appeal, it is clear from the assignment of errors that only two contentions are seriously urged, namely, (1) that appellant was not accorded a full hearing by the Commission, and (2) that the findings of the Commission were not based upon substantial evidence. The court below, upon a consideration of the record before the Commission, wrote no opinion but filed formal findings that appellant had been accorded a full hearing and that the Commission's order was supported by substantial evidence.

3. The proceedings before the Commission clearly satisfy the requirements of a full hearing. Three hearings were held on October 17, 1938, February 19, 1940, and June 3, 1940. Appellant was given full opportunity to present any evidence which it desired in support of its application. At the last hearing, appellant was advised by the examiner that a motion to continue would be enter-

tained for the purpose of allowing appellant to procure and offer additional evidence at a subsequent hearing. Appellant then stated that it was content to rest on the record as then constituted. Prior to the issuance of its final report and order, the Commission gave due consideration to the exceptions filed by appellant to the examiner's proposed report and to appellant's brief in support thereof. The Commission, after due consideration, denied appellant's petition for rehearing upon the ground of after-discovered evidence, but there was no showing that such evidence had not been available to appellant at the hearing, or could not have been procured by the exercise of due diligence, or that such evidence, if accepted, would affect the determination of the issues. The requisites of full hearing were satisfied. *New England Divisions* case, 261 U. S. 184, 200; *Baltimore & Ohio R. Co.* v. *United States,* 298 U. S. 349.

4. The appellant's challenge to the sufficiency of the evidence to sustain the Commission's order is unsubstantial. In the hearing before the Commission, appellant pitted his own undocumented testimony as to his operations against the sworn testimony of various carrier witnesses to the effect that appellant's motor vehicle operations on the "grandfather" date were not appellant's operations at all but were the operations of other carriers by whom appellant was employed. The Commission resolved this direct conflict in the

testimony against appellant. This court stated in *United States* v. *Maher*, 307 U. S. 148, at pages 153–154:

> Whether an applicant seeking an exemption had in fact been in operation within the immunizing period of the statute was bound to raise controverted matters of fact. Their determination Congress entrusted to the Commission.

For the foregoing reasons, we believe that none of the questions raised on this appeal are of substance. It is respectfully submitted that the judgment of the district court should be affirmed.

CHARLES FAHY,
Acting Solicitor General.
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

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